

1 If an issue were to be added then he can have the
2 discovery he is seeking, but I do not believe at this point
3 there is any basis for his document request as it stands.

4 JUDGE SIPPEL: Well, I am going to deny that
5 request at this point. Certainly if you come up with
6 something, and you are going to be taking depositions of
7 these principals. I am not saying that that is an open area
8 of questioning, but there are ways in which if there is a
9 serious question about a financial capability there are ways
10 in which those things do come out. You know, you are always
11 free to file a motion if you find information later that you
12 do not have now, so on that basis.

13 I am also denying it because I feel that this is
14 being a renewal case, I think it is approached differently
15 than just a new facility comparative application. Anyway,
16 the financial documents for the time being are being denied.

17 Your next category is Item Roman number (vi), all
18 documents relating to the applicant's proposed transmitter
19 site.

20 MR. HUTTON: That is right. Again, I think,
21 number one, it is contained in the Commission's category of
22 documents that are applicable to new broadcast applicants,
23 and, number two, I think the case for requiring it to be
24 submitted here is even more compelling because you are
25 talking about displacing an existing television station with

1 existing viewers.

2 JUDGE SIPPEL: All right.

3 MR. COLE: Your Honor, I take that to be
4 essentially the same argument that was made with respect to
5 financial qualifications, and I will make the same arguments
6 with respect to the site availability or the site documents.

7 That is, this is not a straight comparative
8 proceeding. Adams has provided the information which is
9 required of it on the form, and there is no basis at this
10 point to add an issue or to provide for discovery with
11 respect to matters as to which there is no issue.

12 JUDGE SIPPEL: Okay. Now, there is disclosure in
13 the application form --

14 MR. COLE: Yes.

15 JUDGE SIPPEL: -- with respect to siting?

16 MR. COLE: Yes, Your Honor.

17 JUDGE SIPPEL: Let me ask Mr. Shook what the
18 Bureau feels about this.

19 MR. SHOOK: Your Honor, basically I would repeat
20 what I had said before. However, there is another thing
21 that I had not thought of previously, and that is in an
22 effort to continue to streamline its processes and make the
23 entire scheme of regulation make more sense when it comes to
24 issuing construction permits, one of the things that the
25 Commission has emphasized is that it is going to strictly

1 enforce the initial time limits with respect to the period
2 in which a station can be constructed.

3 So, it behooves any applicant that is making a
4 financial and site certification that, you know, they have
5 the money available and that the site be available because
6 once that permit is issued they are going to have a very
7 finite period of time in which to construct. If they do
8 not, the permit is going to be taken back.

9 Again, absent some specific information at this
10 point that would suggest that the certification is
11 inappropriate, we do not see that discovery in this matter
12 should be allowed.

13 JUDGE SIPPEL: All right. Mr. Hutton, do you have
14 any response to either of these points?

15 MR. HUTTON: Your Honor, I am somewhat baffled at
16 the idea that a finding can be made to take an existing
17 television station off the air, finding that that is in the
18 public interest, without having any knowledge as to the
19 viability of the proposed alternative.

20 JUDGE SIPPEL: Well, they have told you where the
21 site is going to be. They have given you their site in
22 their application. Is that not right? They have given you
23 the location?

24 MR. HUTTON: They listed the location, correct,
25 and they listed a contact person.

1 JUDGE SIPPEL: Well, I mean, it would seem to me
2 that if you had, and this is not directed to you personally,
3 but that your clients who are knowledgeable about these
4 things would have enough preliminary information to go the
5 next step.

6 You know, if you had something to offer me in
7 effect to show cause on why you needed that discovery, you
8 know, I would listen, but right now I cannot see a purpose
9 for it. There is no issue. There is no need to go into a
10 threshold inquiry on a transmittal site because there has
11 been no showing for that. I am going to deny this on the
12 same basis.

13 Let's move on to the next category. All documents
14 relating to communications by and between principals of the
15 applicant concerning the application, including
16 communications between active and passive principals.

17 Now, that seems to go, as Mr. Bechtel and Mr. Cole
18 pointed out in their pleading, right to the heart of the
19 integration proposals. Former integration proposals.

20 MR. HUTTON: Right. Well, I had excluded from my
21 document request the categories of documents that directly
22 related to integration. I do not think this is as connected
23 to integration as has been suggested. It says including
24 communications between active and passive principals, but we
25 do not have a two tiered applicant in this case. Adams only

1 has voting stock.

2 What I think is relevant here is it would give me
3 information as to who was involved in putting this
4 application together, who are the driving forces behind this
5 application. It will help me in the discovery process in
6 preparing for depositions of the Adams principals.

7 JUDGE SIPPEL: Mr. Cole? I am sorry.

8 MR. HUTTON: Let me just add that the purpose of
9 discovery is not just to seek discovery of relative
10 material. It is also to seek discovery material that is
11 likely to lead to relevant material. I think this falls
12 into that category.

13 MR. COLE: Your Honor, it seems to me that if Mr.
14 Hutton wanted to know who the driving force behind Adams was
15 he could have presented that in an interrogatory, gotten an
16 answer and noted his deposition and moved forward of the
17 responsive individuals.

18 By seeking a kind of all encompassing and by
19 submitting instead an all encompassing document request, it
20 seems to me that is using an atom bomb to swat a fly if what
21 he wants to do is to find out who the -- as a practical
22 matter, I do not think I would be adverse at this point
23 after the hearing session to confer with Mr. Hutton and to
24 give him, you know, an idea.

25 If he wants to talk to Adams' principals in order

1 of their direct involvement in the application, I would be
2 happy to give him a road map on that.

3 JUDGE SIPPEL: Okay. Mr. Shook?

4 MR. SHOOK: The way the request is written seemed
5 a bit broad, but given some of the I guess explanations or
6 limitations that Mr. Hutton has supplied I do not find that
7 request particularly unreasonable or burdensome.

8 JUDGE SIPPEL: Okay. Mr. Hutton, you get the last
9 word.

10 MR. HUTTON: All right. I would just like to note
11 that, to my knowledge, Adams has never held an operating
12 business. I do not know that there are going to be a lot of
13 documents covered by this category.

14 You know, I think it would be different if Adams
15 had an existing station or something of that nature, but
16 Adams was formed for the purpose of applying for this
17 permit, so I do not think there are going to be a lot of
18 documents covered by this request, so I do not think it
19 falls into the atom bomb category, particularly when Adams
20 has stated that they do not even have any meetings that they
21 have held.

22 JUDGE SIPPEL: Yes. Mr. Cole, if we exclude -- of
23 course, this business about communications between active
24 and passive principals, I mean, we can just disregard that
25 one, and if we exclude anything that would be attorney/

1 client privilege or arguably it is conceivable some of it
2 could get into work product, but, in other words, privileged
3 materials. If we eliminated privileged materials, would
4 this be a very burden request?

5 MR. COLE: I do not anticipate so, Your Honor. I
6 would have to go back and double check with the client just
7 to make sure, but my understanding is that it is a relative
8 small universe of documents.

9 My concern was the breadth of the request as
10 stated just coming out of the blue. I do not want to have
11 to respond to what would appear on its face to be a fairly
12 broad request and run the risk that perhaps I miss a
13 document somewhere along the line that then comes back and
14 surfaces somewhere, and I am accused of having violated or
15 improperly avoided a response.

16 You know, if we can get a narrowing of this I am
17 perfectly happy to go back to the client and get Mr. Hutton
18 responsive documents.

19 JUDGE SIPPEL: All right. I will leave it then to
20 counsel. Work out a time frame.

21 Certainly there would be no privileged documents.
22 If there are any privileged documents, you would get a list
23 of the privileged documents with the traditional information
24 about privileged documents. Let's see. When can you have
25 those?

1 MR. COLE: I will work on it -- I am sorry. Were
2 you asking me?

3 JUDGE SIPPEL: Yes.

4 MR. COLE: I will get on it this afternoon and try
5 to get a response to Mr. Hutton if not this afternoon in
6 terms of the volume of the documents, early next week.

7 We will be doing some depositions next week up in
8 Reading so that may interfere a little bit, but I will
9 certainly work on it over the weekend. Monday I believe I
10 am still in town, so I can possibly, you know, push the
11 process along at that point.

12 JUDGE SIPPEL: All right. Let me put down
13 September 17, a Friday, as the date for at least getting the
14 production process started.

15 MR. COLE: Okay.

16 JUDGE SIPPEL: You should have the bulk of
17 everything to him by the 17th. If there has to be some
18 clean up items, you can do that later.

19 Now, that is all that there was that was in
20 contention under the Section 1.325 documents. Is that
21 correct?

22 MR. HUTTON: No, sir.

23 MR. COLE: No.

24 JUDGE SIPPEL: There are others?

25 MR. HUTTON: Yes.

1 JUDGE SIPPEL: Go right ahead then. I am sorry.
2 Item Roman numeral (xii), all documents that identify or
3 describe the principals who are responsible for completing
4 the application, etcetera.

5 Would those documents not be covered by what we
6 just talked about?

7 MR. HUTTON: No, sir, because the category we just
8 talked about involved communications between or among
9 principals of Adams, whereas this category covers dealings
10 with third parties, such as the transmitter site owner.

11 Again, this relates to the issue of who did what
12 when, and I think that is a reasonable request.

13 JUDGE SIPPEL: Okay. Mr. Cole?

14 MR. COLE: Your Honor, in light of your ruling
15 with respect to the previous section, I would have no
16 objection to going back to the client and attempting to
17 respond with the caveat that again with arranging financing
18 and the obtaining the transmitter site, those were also
19 subject to your earlier earlier ruling, which would preclude
20 my having to produce documents about those aspects.

21 But, in terms of completing the application,
22 publishing required notices, local public inspection file
23 establishment and retaining lawyers, engineers and
24 professionals, I would be happy to make that effort.

25 JUDGE SIPPEL: Well, that is fine. That is good,

1 but I take it that you would not have any problem in terms
2 of a document that was sort of a neutral document that
3 identified who the contact point was with the site owner or
4 who the principal was who was doing the financing?

5 MR. COLE: That is probably true, yes. Let me see
6 what we have --

7 JUDGE SIPPEL: See what you have, yes.

8 MR. COLE: -- in the way of documents, yes. Let
9 me see what we have, and then Mr. Hutton and I can address
10 that. If necessary, we will come back to you.

11 JUDGE SIPPEL: Okay. The same thing on that. We
12 will put a date of the 17th of September when you would
13 start making your production on that.

14 All right. What is next?

15 MR. HUTTON: At the bottom of page 2 of his
16 response, Mr. Cole addressed Romanette (x), which sought
17 representative documents relating to enhancement credits and
18 preferences sought by the applicant principals for local
19 residents, civic participation, past broadcast experience
20 and the like.

21 He objected on the grounds of relevance saying
22 that integration is no longer a factor. However, I think
23 you issued a ruling in this case indicating that you would
24 consider evidence of local residents, civic participation
25 and past broadcast experience. If Mr. Cole's client is

1 claiming any of those preferences, then I think he ought to
2 be required to produce the documents in question.

3 MR. COLE: Your Honor, I apologize to Your Honor
4 and Mr. Hutton because I had originally drafted this before
5 I read your Order, and then it slid by on the way out the
6 door without my catching it.

7 JUDGE SIPPEL: It always pays to read those
8 things.

9 MR. COLE: Mr. Hutton is absolutely correct that
10 Your Honor's ruling does eliminate that.

11 All I can say is, to my knowledge, Adams is not
12 claiming any enhancement credits or preferences for local
13 residents, civic participation, past broadcast experience,
14 minority/female status and the like. Therefore, there would
15 be no responsive documents.

16 JUDGE SIPPEL: Okay. Do you want to get something
17 from him in writing to that effect? I think Mr. Cole has
18 explained it to you.

19 MR. HUTTON: That would be helpful. Sure.

20 JUDGE SIPPEL: Maybe, you know, even a letter or
21 something and a copy to me and to Mr. Shook.

22 Is there anything more?

23 MR. HUTTON: Not within the Section 1.325
24 category.

25 JUDGE SIPPEL: All right.

1 MR. HUTTON: The next category covered a copy of
2 any prior application, except for the Adams application, in
3 which any officer, director or stockholder of Adams has held
4 an interest, whether attributable or non-attributable, since
5 1980.

6 MR. COLE: Well, Your Honor, what we have are
7 mentioned documents in some archives filed somewhere. We are
8 trying to track it down.

9 I did point out that I suspect it may also be
10 available in the Commission's files and, therefore, equally
11 available to Reading as to Adams since we did identify the
12 file number, the market, the channel and the applicant and
13 the docket number, but, you know, we are making an effort to
14 try and find a copy of it.

15 The problem is since it was a long running
16 proceeding, it is entirely possible that our files are
17 either not complete or, if complete, are going to be
18 difficult to kind of reassemble. You know, the petitions
19 for leave to amend tend to get filed periodically over the
20 years. I do not want to miss one if there is one out there.

21 That is the status. There is no objection to
22 that. We are making an effort to get the documents, but we
23 also wanted to put Mr. Hutton and the Court on notice that
24 here is what we are looking for, and if he wants to look for
25 it himself at the FCC he certainly may.

1 JUDGE SIPPEL: Well, yes. I mean, Mr. Hutton has
2 made a legitimate discovery request. The initial burden is
3 certainly on Adams to search for the documents. If you
4 cannot find them, then you have to have an explanation as to
5 why you cannot find them.

6 I am sure if you come up with documents and say
7 this is the best we can do, I would think that Mr. Hutton
8 would have, you know, assistants at the office that would
9 double check and see, but I am speculating here. Work with
10 Mr. Hutton on this. Mr. Hutton, work with Mr. Cole.

11 MR. HUTTON: Yes, sir.

12 MR. COLE: Well, other than the Monroe
13 application, I can state --

14 JUDGE SIPPEL: There is no objection.

15 MR. COLE: No, there is no objection, and other
16 than the Monroe application I can state that we are not
17 aware of any other applications that would fall into this
18 category.

19 JUDGE SIPPEL: All right. The next category is --
20 is this right -- any documents regarding Adams' proposed
21 programming?

22 MR. HUTTON: Yes.

23 JUDGE SIPPEL: That seems to be pretty
24 straightforward. Mr. Cole?

25 MR. COLE: Well, again, Your Honor, there is no

1 issue about programming. Mr. Hutton has asked for a
2 specialized programming issue. We have indicated what we
3 have indicated in our response to that, and, you know, in
4 the event there is a specialized programming issue added
5 that would entail some inquiry into Adams' programming
6 proposal then, you know, we are perfectly happy to provide
7 the documents if any exist.

8 JUDGE SIPPEL: You have already made a disclosure
9 or some disclosure on your proposed programming in your
10 application.

11 MR. COLE: Yes.

12 JUDGE SIPPEL: Is that right?

13 MR. COLE: That is correct.

14 JUDGE SIPPEL: Mr. Hutton has brought that to my
15 attention.

16 MR. COLE: Yes, sir.

17 JUDGE SIPPEL: Does that satisfy your request at
18 this point?

19 MR. HUTTON: Well, I would like to have anything
20 that is beyond the application which may or may not be
21 consistent with what is stated in the application. I think
22 that is a reasonable thing to ask for. I do not think it is
23 a burdensome request either.

24 JUDGE SIPPEL: Well, let me hear from Mr. Cole
25 again on that. What I thought I heard you say was that you

1 really do not have any additional programming documents.

2 MR. COLE: I do not believe we do, Your Honor,
3 but, you know, I can go back and look. Frankly, when I saw
4 the request roll in it did occur to me that it was
5 irrelevant to the issues as they presently stand; perhaps
6 not to the issues if they are revised pursuant to any of the
7 motions to enlarge, but as they presently stand inquiry into
8 the programming proposal and the genesis of the program
9 proposal is not a relevant consideration.

10 JUDGE SIPPEL: Mr. Shook?

11 MR. SHOOK: I believe Mr. Cole's point is well
12 taken in that until Your Honor adds a specialized
13 programming issue, you know, if you were to do so and there
14 was something with respect to Adams also added, and I am
15 vaguely remembering now from the pleadings that was it in a
16 responsive pleading that you filed, Mr. Cole?

17 It was something to the effect that, you know, if
18 Your Honor chose to add a specialized programming issue with
19 respect to Reading it should also do so with respect to
20 Adams, and here is why. It was not very detailed. It was
21 not as drawn out as the motion that Reading had submitted,
22 but I believe that thought was in there.

23 Moving back from that, what that tells me is that
24 we do not have a specialized programming consideration at
25 this point. Absent that, I believe Mr. Cole's point is

1 accurate and correct that there is no reason to look into
2 that.

3 JUDGE SIPPEL: Well, as I am hearing Mr. Hutton,
4 he wants to test I guess the accuracy of the representation
5 of the application that this is, you know, what we plan to
6 do. Am I hearing you right on that, Mr. Hutton?

7 MR. HUTTON: That is correct.

8 JUDGE SIPPEL: Well, I am going to permit that. I
9 am going to require those documents to be produced. There
10 has been enough representations made from Adams' side on
11 this issue. That is on the one hand.

12 On the other hand, what I am hearing is that if
13 there is any of this documentation around that is responsive
14 to that request it should not be burdensome, and there
15 should not be too much of it. Unless you are going to come
16 in on a Protective Order on it for some burdensome reason,
17 Mr. Cole, I am going to require that those documents be
18 produced also.

19 MR. COLE: Fine, Your Honor. Same schedule as --

20 JUDGE SIPPEL: Same schedule, yes. September 17.

21 Okay. Now, the next category I believe is
22 documents regarding Reading or its officers, directors,
23 etcetera, of the TV station. I guess you describe that
24 request. It looks like it is a catch all.

25 MR. HUTTON: I am not sure I would use that

1 phrase. Actually, I tried to --

2 JUDGE SIPPEL: All right.

3 MR. HUTTON: I tried to exclude all documents that
4 we have produced to them, which I think is fair. One of the
5 central purposes of discovery is to avoid litigation by
6 surprise, and I have had a fair number of surprises already
7 in this case. I would like to avoid any more.

8 To the extent that Mr. Cole has a work product
9 claim or an attorney/client privilege claim then there are
10 procedures for asserting such a claim, but basically I would
11 like to be able to prepare for discovery against my client
12 by having copies of the documents that Reading has -- I am
13 sorry. That Adams has concerning Reading or its officers,
14 directors or shareholders of the TV station.

15 JUDGE SIPPEL: Mr. Cole?

16 MR. COLE: Your Honor, as the request was framed,
17 I viewed it in effect as what Your Honor described, a catch
18 all. Actually, I viewed it more in the nature of a request
19 for me to give him a complete index of all my files and then
20 put the burden on me to say which ones were not producible
21 because of attorney/client privilege claims, work product
22 claims and the like.

23 I view that to be an exceedingly and objectionably
24 over broad and vague request and a valid basis for objecting
25 to the document request as it was presented.

1 Notwithstanding that, I did try in the response to indicate
2 that we do have a number of documents from various public
3 sources, and if that is what Mr. Hutton is looking for I am
4 perfectly happy to provide those to Mr. Hutton as a matter
5 of cooperation and also to the Bureau if they want. It
6 consists of copies of applications and the like that we
7 pulled from the Commission's files and from other sources
8 concerning primarily Mr. Parker.

9 I am happy to make those available, but, you know,
10 as far as other -- my analyses and so forth, I am not
11 inclined to obviously provide those because I view them to
12 be protected by either attorney/client or work product
13 privileges. I am also somewhat adverse to providing an
14 extensive list of, you know, whatever I have because again
15 by providing a list you give somebody a road map to what
16 your files look like.

17 If Mr. Hutton wants the public documents that I
18 have obtained, I am happy to give him a copy of them with a
19 certification from me that this represents what I have
20 pulled from the Commission's files and/or from whatever
21 public files I have gotten them from.

22 JUDGE SIPPEL: Mr. Shook?

23 MR. SHOOK: I think the request as described by
24 Mr. Hutton and essentially limited by Mr. Hutton this
25 morning makes sense. I do not see any problem with it.

1 It would seem to me that, you know, Mr. Cole can
2 address the privilege situation as he sees fit. It seems to
3 me that with respect to the documents that arguably are
4 publicly available that the request, you know, could be met
5 even by Mr. Cole simply making known to Mr. Hutton, you
6 know, what those documents might be, such as applications.

7 JUDGE SIPPEL: I think the way to resolve this one
8 is to under those conditions to allow Mr. Hutton to have
9 those documents, but that also Mr. Cole can have the same
10 documents from Reading. It would be a mutual exchange of
11 that category of documents.

12 Of course, it would have to exclude -- I mean it
13 could exclude, unless it is going to be waived, a knowing
14 waiver of privileged materials. I will leave it to counsel
15 to work out an exchange date on that.

16 MR. COLE: So am I correct then, Your Honor, that
17 what I will do will be to provide Mr. Hutton with the
18 documents that in my view are not covered by a privilege,
19 but then ask you for a Protective Order with respect to
20 privileged documents?

21 JUDGE SIPPEL: Well, you are just going to give
22 him a list of the documents. You are going to give him the
23 documents that he has asked for, and you are going to give
24 him a list of the ones that are being held back for a
25 privilege.

1 He is going to do the same thing for you except
2 where you read any documents regarding Reading. From his
3 side, he is going to give you any documents regarding Adams.

4 MR. COLE: Well, also, Your Honor, could we ask
5 him as well to give us documents relating to Reading? Bear
6 in mind, these are documents which we have which were
7 generated by his client or principals of his client and,
8 therefore, presumably within their control somewhere if they
9 exist.

10 We have pulled ours from public files. Obviously
11 if there are other documents out there that fit within this
12 category that he has that we do not turn over, we would like
13 to see copies of those.

14 JUDGE SIPPEL: Well, I do not understand that. I
15 do not understand broadening it to that extent. I mean,
16 what he is asking is he has explained why, but what he is
17 asking for is he wants you to go back into your files, and
18 any documents that Adams has in its files relating to
19 Reading, he wants to see them. I am saying that is fine,
20 but he should also give you anything in their files with
21 regards to Adams, just an equal swap.

22 Now, you say going beyond that. Beyond that it
23 goes way beyond the scope of what we are talking about on
24 that particular category.

25 Mr. Hutton, I guess he is making a counter offer.

1 MR. HUTTON: Well, if I heard him correctly, he is
2 asking for any documents we have concerning Reading
3 Broadcasting. This is an operating company that generates
4 thousands of documents. We cannot do that.

5 JUDGE SIPPEL: Mr. Shook, I take it that you --

6 MR. SHOOK: I agree with Mr. Hutton.

7 JUDGE SIPPEL: -- agree with Mr. Hutton? I do,
8 too.

9 Yes. My ruling stays as it is going to stay with
10 respect to Mr. Hutton's Category 4. I am going to leave it
11 to counsel to agree on, you know, the date. This can be a
12 same date exchange.

13 MR. COLE: Again, Your Honor, what I provide to
14 Mr. Hutton is the documents plus a listing of those as to
15 which I am claiming privilege. If he then wants to move for
16 an Order compelling disclosure of those --

17 JUDGE SIPPEL: Right.

18 MR. COLE: -- then I can seek a Protective Order
19 if necessary and present them for in camera inspection and
20 so forth?

21 JUDGE SIPPEL: Exactly. If we have to, we will go
22 through that process and do an in camera, but, as I say,
23 each side is getting equal treatment on that one. I agree.
24 I mean, it makes sense. These are relevant documents. They
25 are relevant at least for purposes of discovery.

1 Okay. That is all I have. Is there anything else
2 that anybody else wants to raise at this time?

3 MR. HUTTON: No, sir.

4 JUDGE SIPPEL: Except the first thing that you
5 talked about, Mr. Shook. We do not want to talk about that.

6 MR. SHOOK: Oh, that.

7 JUDGE SIPPEL: Wrong time. Wrong place.

8 MR. SHOOK: I have a baseball bat, which I will
9 use once you leave the room.

10 JUDGE SIPPEL: I do not want to be here when that
11 happens.

12 MR. SHOOK: I promise to clean up the blood.

13 JUDGE SIPPEL: All right. I have nothing further.
14 I will move on your papers, you know, certainly timely, but
15 there is a lot to look at with what you have given me. I am
16 going to move on them as quickly as I can and encourage you
17 to keep up the good work on moving discovery along.

18 If we need another conference, certainly I will
19 call one if I see it. If there is any reason that you need
20 any more assistance from me during discovery, I am
21 available.

22 Thank you very much.

23 ALL: Thank you, Your Honor.

24 (Whereupon, at 10:40 a.m. the hearing was
25 concluded.)

REPORTER'S CERTIFICATE

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HEARING DATE: September 10, 1999

LOCATION: Washington, D.C.

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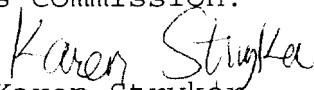
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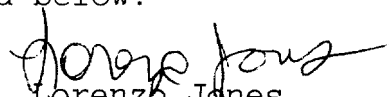
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